

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 221**

January 27, 2021

**SUMMARY OF BILL:** Requires a court to grant judicial diversion for possession of less than one ounce of marijuana, regardless of a defendant's prior criminal convictions.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Expenditures - \$543,100 Incarceration\***

**Decrease Local Revenue - Net Impact -  
\$320,600/FY21-22 and Subsequent Years**

**Decrease Local Expenditures - \$2,015,900/FY21-22 and Subsequent Years**

**Assumptions:**

- The proposed legislation will reduce convictions for simple possession involving an amount of marijuana less than one-half ounce.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 1,841 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there is a total of 18,410 convictions (1,841 / 10%) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- The potential punishment for a Class A misdemeanor is up to 11 months, 29 days in jail, a fine up to \$2,500, or both.
- This analysis estimates 10 percent, or 1,841 (18,410 x 10%) offenders, currently pay an average \$250 fine for simple possession. The proposed legislation will result in a recurring decrease of local revenue estimated to be \$460,250 (1,841 x \$250).
- This analysis assumes 10 percent of offenders are spending an average of 15 days in local jail for Class A misdemeanor convictions of Tenn. Code Ann. § 39-17-418.
- The average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- The proposed legislation will lead to a recurring decrease in local incarceration expenditures estimated to be \$2,015,895 (\$73 x 1,841 offenders x 15 days).
- The proposed legislation will decrease admissions for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and one ounce.

- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), one commits a Class E felony for possessing marijuana in an amount between one-half ounce and 10 pounds. The proposed legislation would allow possession of marijuana in an amount between one-half ounce and one ounce. The proposed legislation will result in fewer Class E felony admissions for possession for amounts of marijuana between one-half ounce and one ounce.
- Based on information provided by the Department of Correction (DOC), there has been an average of 216.4 admissions per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and 10 pounds.
- This analysis assumes offenders imprisoned for possession of marijuana possessed a substantial amount of marijuana, which likely exceeded one ounce. It is assumed that the proposed legislation will reduce these admissions by 10 percent (216.4 admissions x 10% = 22 admissions).
- The average time served for a Class E felony is 0.84 years (306.81 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- The proposed legislation will decrease recurring state incarceration expenditures by \$543,091 in FY21-22 and subsequent fiscal years (22 admissions x 306.81 days x \$80.46).
- Pursuant to Tenn. Code Ann. § 8-21-401(d)(2), a court clerk shall charge a fee of \$100 for proceedings related to expungements.
- This analysis assumes 75 percent, or 1,397 [(1,841 + 22) x 75%], individuals will successfully complete judicial diversion and request and pay to have a record expunged.
- The recurring increase in local revenue in FY21-22 and subsequent fiscal years is estimated to be \$139,700 (1,397 x \$100).
- The recurring net decrease in local revenue in FY21-22 and subsequent fiscal years resulting from the proposed legislation is estimated to be \$320,550 (\$460,250 - \$139,700).

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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